



Comptroller General  
of the United States  
Washington, D.C. 20548

Morrow  
143709

## Decision

**Matter of:** Wheeler Bros., Inc.  
**File:** B-242061.2  
**Date:** April 19, 1991

Vincent J. Barbera, Esq., Barbera & Barbera, for the protester.  
Charles W. Morrow, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

### DIGEST

Protest against provisions in request for proposals is untimely where filed after the closing date for the receipt of initial proposals.

### DECISION

Wheeler Bros., Inc.<sup>1/</sup> protests certain provisions in request for proposals (RFP) No. DLA700-90-R-0761, issued by the Defense Logistics Agency, Defense Construction Supply Center (DCSC), to operate a parts depot at the Defense Depot, Mechanicsburg, Pennsylvania. Wheeler specifically protests certain provisions contained in section H of the RFP to research, identify, purchase, and abstract needed spare parts. Wheeler also protests the 15 percent limitation on positive discounts contained in section B of the RFP. Wheeler contends that these provisions are unduly burdensome on the contractor and may result in increased costs to the government.

We dismiss the protest.

On October 3, 1990, Wheeler raised these same allegations with DCSC. DCSC partially responded to those concerns in amendment No. 3, issued November 1.<sup>2/</sup> However, the essential nature of these requirements did not change, notwithstanding Wheeler's objections.

Proposals were submitted by the November 20, 1990, closing date. Amendment Nos. 5, 6, and 7 were issued after this closing date to make various changes to the RFP, and revised

<sup>1/</sup> Wheeler is the incumbent contractor for these services.

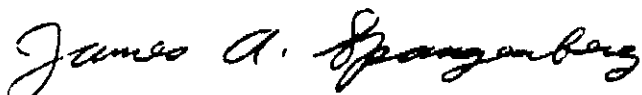
<sup>2/</sup> Amendment No. 4 was also issued prior to the date for receipt of initial proposals.

proposals were requested. On March 8, 1991, more than 3 months after the initial closing date, Wheeler filed this protest in our Office raising essentially the same allegations contained in its October 3 letter. This protest was filed prior to the next closing date for receipt of proposals on March 14.

Our Bid Protest Regulations contain strict rules requiring the timely submission of protests. These rules specifically require that protests based upon alleged improprieties in a solicitation that are apparent prior to the closing date for receipt of initial proposals must be filed prior to the closing time. 4 C.F.R. § 21.2(a)(1) (1991); Engelhard Corp., B-237824, Mar. 23, 1990, 90-1 CPD ¶ 324. Here, with the possible exception of one modification of section H made in amendment No. 7, all solicitation requirements that Wheeler protests were contained in the solicitation as it was amended when initial proposals were received. Our timeliness rules reflect the dual requirements of giving protesters a fair opportunity to present their cases and resolving protests expeditiously without unduly disrupting the procurement process. See Air Inc.--Recon., B-238220.2, Jan. 29, 1990, 90-1 CPD ¶ 129. Therefore, with the exception of this one item (discussed below), we find that the protest is untimely since it was not filed prior to the initial closing date.<sup>3/</sup>

With respect to the other item, amendment No. 7 required the contractor to stock parts at the lowest cost to the government. Previously, the RFP required the contractor to stock the lowest cost part to the government "to the extent practicable." Although Wheeler does not specifically protest this provision, it does object to the alleged RFP requirement that the contractor obtain the lowest priced parts. However, DCSC, in response to the protest, reports that the requirement will be remodified to reflect the original language. Consequently, to the extent Wheeler's protest of this provision can be considered timely, we dismiss it as academic, since the protester did not protest or object to the requirement, when faced with that opportunity, prior to the initial closing date.

The protest is dismissed.



James A. Spangenberg  
Assistant General Counsel

---

<sup>3/</sup> The agency has, nevertheless, indicated in its report that it intends to modify some of the untimely protested requirements and solicit new proposals.